

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Eric Black	Team: Team # 6	CCRB Case #: 200808128	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 06/07/2008 12:00 PM	Location of Incident: Barnes Avenue and East 229th Street	Precinct: 47	18 Mo. SOL 12/7/2009	EO SOL 12/7/2009	
Date/Time CV Reported Sat, 06/07/2008 1:53 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 06/07/2008 1:53 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Robert Roda	01234	939332	047 PCT
2. POM Patrick Jean	24116	936810	047 PCT
3. SGT John Mcdonagh	03642	930677	047 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Gennaro Russo	12523	935665	047 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Patrick Jean	Discourtesy: PO Patrick Jean spoke obscenely to § 87(2)(b)	
B.POM Robert Roda	Abuse: PO Robert Roda forcibly stopped § 87(2)(b)	
C.SGT John Mcdonagh	Abuse: Sgt. John Mcdonagh supervised the frisk of § 87(2)(b)	
D.SGT John Mcdonagh	Abuse: Sgt. John Mcdonagh supervised the search of § 87(2)(b) and an individual.	
E.SGT John Mcdonagh	Abuse: Sgt. John Mcdonagh supervised the search of the car in which § 87(2)(b) was an occupant.	

Synopsis

On June 7, 2008, § 87(2)(b) filed the following complaint via the Civilian Complaint Review Board (CCRB) Call Processing System regarding an incident that occurred on the same day.

On June 7, 2008 at approximately 12:00 PM, § 87(2)(b)'s vehicle was stopped in the vicinity of Barnes Avenue and East 229th Street in the Bronx for a broken brake light. § 87(2)(b)'s friends § 87(2)(b) and an individual known only as § 87(2)(b) were also in the vehicle. Four officers in plainclothes approached the vehicle. PO Patrick Jean of the 47th Precinct allegedly told § 87(2)(b) to "Shut the fuck up" (Allegation A). PO Robert Roda of the 47th Precinct allegedly opened the driver's side door of the vehicle, pulled § 87(2)(b) from the vehicle, and pushed him, back first, against the vehicle (Allegation B). An officer allegedly frisked § 87(2)(b) (Allegation C), an officer allegedly searched § 87(2)(b) and § 87(2)(b) (Allegation D), and officers allegedly searched § 87(2)(b)'s vehicle under the supervision of Sgt. John McDonagh of the 47th Precinct (Allegation E). § 87(2)(b) and § 87(2)(b) were released without summonses.

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b)

§ 87(2)(b) a § 87(2)(b)-old, 5'10", 160 lb., black male with black hair and brown eyes filed the following complaint on June 7, 2008 (encl. B 1-2). On July 17, 2008, § 87(2)(b) appeared at the CCRB and provided a statement regarding the incident (encl. B 3-8). § 87(2)(g)

On June 7, 2008 at approximately 12:00 PM, § 87(2)(b) was driving in his white Honda Accord on Barnes Avenue near East 229th Street in the Bronx and was stopped by a dark blue unmarked police car. § 87(2)(b) was driving the car. § 87(2)(b)'s friend, who he knows only as § 87(2)(b) was in the passenger seat, and his friend § 87(2)(b) was in the back seat. § 87(2)(b) was driving to a house on Barnes Avenue to pick up a vacuum cleaner.

Four plainclothes police officers exited the police vehicle. The officers approached § 87(2)(b)'s vehicle, and took up positions around the car with one officer standing by each of the four windows of the vehicle. The officer that was standing near the front driver's side window (PO 1) asked § 87(2)(b) for his license and registration. § 87(2)(b) took his registration out of the glove compartment and handed it to the officer. § 87(2)(b) described the officer as a 5'10", 190 lb., white male with brown hair. A second officer, who was identified by the investigation as PO Robert Roda, stood at the rear window of the driver's side. PO Roda was a 6', 210 lb., white male with brown hair. PO Roda's shield number was 12357. § 87(2)(b) obtained the shield number from § 87(2)(b) who read it off of PO Roda's uniform. There was a third officer, who has been identified by the investigation as PO Patrick Jean, standing near the front passenger side window. PO Jean was a 6'2", muscular black male who weighed more than 200 lbs. There was also a fourth officer who was standing next to the passenger's side rear window. § 87(2)(b) could only described this officer as a 5'10", 200 lbs., white male.

§ 87(2)(b) asked PO 1 why he was being stopped. PO 1 told him, "Shut up and I will tell you in one second." § 87(2)(b) then told PO Roda, "Hey I am one of you guys. I am just asking likely why I am being pulled over." PO Roda told § 87(2)(b) to "shut up" because he was not the driver. PO Jean then told § 87(2)(b) "Shut

the fuck up.” § 87(2)(b) then asked, “What are you cursing.” PO Jean then said, “You know what. My fault for cursing, but just shut up.” § 87(2)(b) works in law enforcement. § 87(2)(b) then asked, “Officer, what is the problem? Are you gonna tell me that I fit the description of somebody you lookin’ for?” PO Roda got angry, opened the driver side door, grabbed § 87(2)(b) by the left arm above the wrist, removed § 87(2)(b) from the vehicle, and pushed his back against the car. PO Roda said, “Don’t move and don’t try nothing.” The other officers then told § 87(2)(b) and § 87(2)(b) to get out of the car. § 87(2)(b) was then taken to the back of his vehicle and told to sit on his hands on the bumper. PO 1 searched inside all of § 87(2)(b)’s pants pockets, felt around his waist, and then felt down his legs to check and see if there was anything under his pants. § 87(2)(b) also saw PO Jean search § 87(2)(b). PO Jean went into § 87(2)(b)’s pockets and felt around his waist in the same manner that § 87(2)(b) was searched. § 87(2)(b) did not see § 87(2)(b) get searched.

PO Roda then took § 87(2)(b)’s car keys. PO Roda and PO Jean searched the vehicle. The officers searched under the seats in the car, in the glove compartment, and an officer opened the trunk and searched in the trunk. § 87(2)(b) asked the officers why they were searching his car and PO Roda told him he had the right to do whatever he wants because he is a police officer. After the officers searched the vehicle, they allowed § 87(2)(b) and § 87(2)(b) to return to the vehicle. PO Roda told § 87(2)(b) that they stopped him because one of his lights was out. § 87(2)(b) later checked and confirmed that his break light in the center of the rear windshield was burned out. The officers then returned to their vehicle and left the location.

After approximately 10 minutes, § 87(2)(b) then went to the 47th Precinct stationhouse to make a complaint. § 87(2)(b) went inside the stationhouse and § 87(2)(b) and § 87(2)(b) remained inside the vehicle. § 87(2)(b) asked a female police officer to file a complaint. The officer told § 87(2)(b) that he had to wait, and if he did not want to wait, then he could call the 800 number on the sign. § 87(2)(b) did not file the complaint in the precinct and instead called the CCRB and left his complaint on the call processing system.

Attempts to Identify Victims

§ 87(2)(b) did not know § 87(2)(b)’s first name and could not provide any contact information for him. § 87(2)(b) is not listed on the Stop, Question, and Frisk Index on June 7, 2008. There was one other individual who is listed on the index as being stopped by PO Roda on June 7, 2008, § 87(2)(b). § 87(2)(b) was contacted and denied any knowledge of the incident. Without any further information from § 87(2)(b) about § 87(2)(b) there is no way to identify him or contact him regarding the investigation.

§ 87(2)(b) was not able to provide any contact information for § 87(2)(b) when he appeared at the CCRB, but stated that he would contact the CCRB with the information. A follow-up call was placed to § 87(2)(b) on August 1, 2008. § 87(2)(b) was not available, but a message was left for § 87(2)(b) to contact the CCRB with information on how to reach § 87(2)(b). § 87(2)(b) never contacted the CCRB with the information. A search of the Department of Motor Vehicles (DMV) database revealed numerous results for § 87(2)(b). Without any further information from § 87(2)(b) about § 87(2)(b) there is no way to narrow the search. A 411 search of the Bronx was conducted for § 87(2)(b) which revealed one possible address and phone number. The phone number was disconnected. Two letters were sent to the 411 address on February 2, 2009 and February 17, 2009, which were not returned. As of the date of this report, § 87(2)(b) has not contacted the CCRB. Without any further information from § 87(2)(b) about the identity of § 87(2)(b) there is no way for the investigation to identify and contact him.

Results of Investigation

Attempts to Contact Witnesses

PO Roda prepared a Stop, Question, and Frisk report relating to the stop of § 87(2)(b). The report notes that other people were stopped with § 87(2)(b) and indicates a corresponding UF 250 number. The corresponding Stop, Question, and Frisk report was obtained. The corresponding report was filed for the stop of Glynn Thompson

who was stopped at the same time and location as § 87(2)(b). This report was also filed by PO Roda. On August 28, 2008, a letter was sent to § 87(2)(b) at the address listed on the Stop, Question, and Frisk report. § 87(2)(b) contacted the CCRB by phone on September 2, 2008 and stated that he did not know § 87(2)(b). § 87(2)(b) stated that he was alone when he was stopped by officers for making an improper turn. § 87(2)(b) denied any knowledge of the incident.

Identification of Officers Interviewed

The Stop, Question, and Frisk report filed for the stop of § 87(2)(b) was filed by PO Roda. On June 7, 2008, PO Roda was working with the 47th Precinct Anti-Crime Team. The 47th Precinct Roll Call on June 7, 2008 states that PO Russo and PO Jean were assigned to the Anti-Crime Team under the supervision of Sgt. McDonagh. The roll call also notes that PO Diggs was initially assigned to work with the Anti-Crime Team, but was then reassigned to other duties. As a result, Sgt. McDonagh, PO Roda, PO Jean, PO Russo, and PO Diggs were interviewed.

Officer Statements

On June 7, 2008, PO Jean, PO Roda, and PO Russo worked from 9:30 AM until 6:05 PM and Sgt. McDonagh worked from 9:26 AM until 6:10 PM. PO Jean, PO Roda, and PO Russo were working Anti-Crime. Sgt. McDonagh was the Anti-Crime supervisor. Sgt. McDonagh, PO Jean, PO Roda, and PO Russo were dressed in plainclothes and were assigned to an unmarked police vehicle.

Sgt. John McDonagh

Sgt. John McDonagh, a § 87(2)(b)-old, 5'11", 200 lbs., white male police officer with brown hair and hazel eyes was interviewed at the CCRB on June 12, 2009 (encl. C 1-2). Sgt. McDonagh had no memo book entries regarding this incident.

Sgt. McDonagh had no recollection of the incident. Sgt. McDonagh was shown a photograph of § 87(2)(b) but did not recognize him. Sgt. McDonagh was shown the 250s filed by PO Roda. Sgt. McDonagh confirmed that PO Roda was part of the Anti-Crime team, but the 250s did not help him recall the incident. Sgt. McDonagh viewed the roll call and stated that PO Digg's tour was changed from Anti-Crime to Court on the day of the incident. Sgt. McDonagh was given a brief summary of the incident, but still had no recollection about what happened.

PO Patrick Jean

PO Patrick Jean, a § 87(2)(b)-old, 6'2", 230 lbs., black male with brown hair and brown eyes was interviewed at the CCRB on April 28, 2009 (encl. C 7-8). PO Jean did not have any memo book entries regarding this incident.

PO Jean did not recall the incident. PO Jean was shown a photograph of § 87(2)(b) and copies of the 250s filed by PO Roda. PO Jean was given a brief description of the incident. PO Jean still could not recall the incident.

PO Robert Roda

PO Robert Roda, a § 87(2)(b)-old, 5'7", 175 lbs., white male with brown hair and hazel eyes was interviewed at the CCRB on March 26, 2009 (encl. C 14-15). PO Roda had no memo book entries regarding this incident.

PO Roda filed a Stop, Question, and Frisk Worksheet that states that § 87(2)(b) was stopped with other individuals under the suspicion of Grand Larceny Auto (encl. C 11-13). The worksheet confirms that § 87(2)(b) was frisked, but states that he was not searched. The report lists the following as the circumstances leading to the stop: furtive movements and smell of burning marijuana. Additional factors listed include: area has high incidence of reported offense and evasive, false or inconsistent responses to officer's questions. The basis for the frisk is listed as inappropriate attire-possibly concealing weapon, refusal to comply with officer's directions and furtive movements.

Despite the preparation of the aforementioned UF-250, PO Roda could not remember the incident at the time of his interview. PO Roda was shown a photograph of § 87(2)(b) and a copy of the 250 that he filed as well as brief summary of the incident. However, PO Roda still could not recall the incident.

PO Gennaro Russo

PO Gennaro Russo, a 6'1", 210 lb., white male with brown hair and hazel eyes was interviewed at the CCRB on May 21, 2009 (encl. C 18-19). PO Russo did not have any memo book entries regarding this incident.

PO Russo could not recall this incident. PO Russo was shown photographs of § 87(2)(b) and given a brief summary of the incident. PO Russo still could not remember any information about the incident.

PO Thomas Diggs

PO Thomas Diggs, a 6'3", 240 lb., black male with black hair and brown eyes was interviewed at the CCRB on May 21, 2009 (encl. C 22-23). PO Diggs did not have any memo book entries regarding this incident.

On June 7, 2008, PO Diggs worked from 9:30 AM until 6:05 PM. PO Diggs was assigned to an Anti-Crime. PO Diggs did not remember if he was working with anyone else on the date of the incident. PO Diggs was dressed in plainclothes and was assigned to an unmarked vehicle. When interviewed, PO Diggs could not recall the incident.

Police Documents

Command Log: The 47th Precinct Command Log on June 7, 2008, notes that PO Diggs had an arrest at 1:45 AM, who was released at 4:55 AM. The command log also notes that PO Jean, PO Russo, and PO Roda were present for duty at 9:30 AM (encl. D 1-4).

Roll Call: The 47th Precinct Tour 2 Roll Call on June 7, 2008 confirms that PO Jean, PO Russo, and PO Roda were working Anti-Crime under the supervision of Sgt. McDonagh. PO Diggs was initially assigned to work Anti-Crime, but was reassigned to other duties (encl. D 5-14).

Stop, Question, and Frisk Index: The 47th Precinct Stop, Question, and Frisk Index on June 7, 2008 notes that § 87(2)(b) and § 87(2)(b) were stopped by PO Roda. There were three other stops listed, but they were conducted by officers not involved in the incident (encl. D 15).

Police Officer CCRB History

In his 4-year-tenure with the NYPD, PO Jean has had no substantiated cases with the CCRB (encl. A 1). In his 3-year-tenure with the NYPD, PO Roda has had no substantiated cases with the CCRB (encl. A 2). In his 6-year-tenure with the NYPD, Sgt. McDonagh has had no substantiated cases with the CCRB (encl. A 3).

Civilians CCRB History

§ 87(2)(b) has had no prior complaints with the CCRB (encl. A 4).

Civilian Criminal Conviction History

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Conclusions and Recommendations

Identification of Subject Officers

§ 87(2)(b) alleged that a black male officer told § 87(2)(b) "Shut the fuck up." The roll call notes that there were two black male officers assigned to the Anti-Crime team that stopped § 87(2)(b)'s vehicle, PO Jean and PO Diggs. § 87(2)(b)'s description of this officer was a muscular black male, 6'2", who weighed more

than 200 lbs. PO Diggs and PO Jean both fit this description. However, the command log notes that PO Diggs made an arrest at 1:45 AM on the incident date. The arrested individual was released at 4:55 AM. Given this, it is likely that PO Diggs was not working with the Anti-Crime team when the incident occurred. This is confirmed by § 87(2)(b)'s statement, which only described one black male officer, and the command log, which notes that PO Jean, PO Russo, and PO Roda reported for duty together at 9:30 AM. Therefore, Allegation A is pleaded against PO Jean. § 87(2)(b) stated that an officer, with the shield number 12357, pulled him from the vehicle. The description that § 87(2)(b) provided for this officer was general, and is similar to the descriptions of the other two white male officers at the location. Nevertheless, PO Roda's shield number is 1234, which is similar to the number that § 87(2)(b) gave. No other officer on the Anti-Crime team has a shield number comparable to 12357 and PO Roda was the officer that filed the Stop, Question, and Frisk Worksheet for the stop of § 87(2)(b). As a result, Allegation B is pleaded against PO Roda. § 87(2)(b) alleged that an officer frisked and searched him. § 87(2)(b) stated that he observed an officer frisk § 87(2)(b). § 87(2)(b) also alleged that two officers searched his vehicle. Sgt. McDonagh was the ranking supervisor at the location § 87(2)(g).

§ 87(2)(g)

§ 87(2)(g)

Undisputed Facts

It is undisputed that officers stopped § 87(2)(b)'s vehicle and that § 87(2)(b) was removed from the car and frisked.

Disputed Facts

§ 87(2)(g)

§ 87(2)(g)

Allegations Not Pled

§ 87(2)(b) stated that the officers informed him that the reason they stopped his vehicle was because of a non-functioning brake light. § 87(2)(b) confirmed that his brake light was not operating properly. § 87(2)(g)

§ 87(2)(b) stated that he went to the 47th Precinct stationhouse to file a complaint and was told to wait. § 87(2)(b) chose not to wait and filed the complaint on his own via the CCRB's call processing system. § 87(2)(g)

§ 87(2)(g)

Assessment of Evidence

§ 87(2)(b) alleged that PO Jean told § 87(2)(b) to "Shut the fuck up." PO Jean could not recall the incident or whether he ever interacted with § 87(2)(b) and § 87(2)(b). § 87(2)(g)

However, § 87(2)(b) stated that § 87(2)(b) questioned PO Jean about why he was cursing at which time PO Jean stated "You know what. My fault for cursing, but just shut up." § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) alleged that PO Roda forcibly stopped him by pulling him from his vehicle and pushing him, back first, against the vehicle. PO Roda filed a Stop, Question, and Frisk worksheet for the stop of § 87(2)(b) confirming that an interaction between PO Roda and § 87(2)(b) occurred; however, none of the officers interviewed could recall the incident. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) alleged that an officer frisked him. § 87(2)(b) alleged an officer searched him and § 87(2)(b) alleged that officers searched his vehicle. Sgt. McDonagh was the ranking supervisor on the scene § 87(2)(g). Sgt. McDonagh confirmed that he was the Anti-

Crime supervisor on the incident date, but had no recollection of the incident. The Stop, Question, and Frisk Worksheet filed by PO Roda corroborates that § 87(2)(b) was frisked, but not searched. § 87(2)(g)

Allegation A: PO Patrick Jean spoke obscenely § 87(2)(b)

§ 87(2)(b) alleged that PO Jean told § 87(2)(b) to “Shut the fuck up.” PO Jean could not recall the incident or interacting with § 87(2)(b) § 87(2)(g)

Allegation B: PO Robert Roda forcibly stopped § 87(2)(b)

§ 87(2)(b) alleged that he was forcibly stopped by PO Roda by physically being removed from his vehicle.

§ 87(2)(g)

Allegation C: Sgt. John McDonagh supervised the frisk of § 87(2)(b)

Allegation D: Sgt. John McDonagh supervised the search of § 87(2)(b) and § 87(2)(b)

Allegation E: Sgt. John McDonagh supervised the search of the car in which § 87(2)(b) was an occupant.

§ 87(2)(b) alleged that he was frisked by an officer. § 87(2)(b) alleged that he and § 87(2)(b) were searched by an officer. § 87(2)(b) alleged that officers searched his vehicle. Sgt. McDonagh was the supervisor at the location § 87(2)(g) None of the officers interviewed recalled the incident. § 87(2)(g)

Investigator:

Date:

Inv. Eric Black

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: